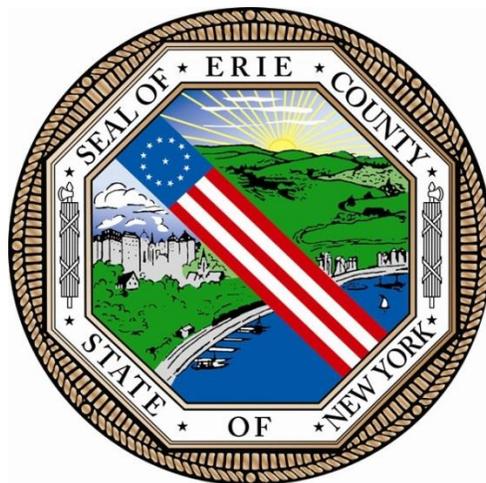


October 2020

**A Report on Fines Issued by Health Department
Under COVID-19 Policies**



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Erie County Legislature
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Dear Honorable Members:

The Erie County Comptroller's Office has completed a report on fines issued by the Erie County Department of Health under New York State COVID-19 Executive Orders (EO) and NY Forward guidelines.

Our objectives were to:

- Examine the number of site visits by the Health Department
- Determine the number of violations
- Calculate the total amount of fines imposed on local businesses and establishments
- Review the factors that went into violations and fines

To accomplish these objectives, we reviewed Health Department records provided on October 8, 2020, with a starting date of March 27, as well as the Health Department website, www.erie.gov/health, under the tab: Restaurant Inspection Reports.

As a result of our examination, we have provided information which may be helpful in a discussion regarding fines placed on local businesses going forward during this difficult financial time for Erie County.

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Background

The first COVID-19 case in Erie County was reported on March 15, 2020. Soon after, schools, restaurants and bars, malls, retail stores, bowling alleys, movie theaters and stage theatres, gyms, and other businesses and organizations closed down. In the months that followed, protocols, policies and regulations from New York State and Erie County were announced in quick succession. As more information became known about the virus, more protocols, policies and regulations were handed down by state and local government.

These protocols, policies and regulations ranged from percentage of capacity and required health screenings, to social distancing and mask wearing. On April 17, 2020 Gov. Andrew Cuomo signed Executive Order 202.17, requiring anyone in public places to wear a mask or cloth covering over their nose and mouth whenever social distancing is impossible. One month later, on May 15, 2020, Erie County Executive Mark C. Poloncarz issued a Local Emergency Order regarding the usage of face coverings and masks at Erie County-owned and operated buildings.

As such, both the Governor and County Executive took to their daily/weekly briefings to promote the use of face masks and coverings, and warn violators of repercussions. As the community reopened in Phases, the demand on the public to wear face masks grew, with masks required for industries to welcome back customers to their businesses. On June 5, 2020, between Phases 2 and 3, the Governor allowed restaurants to have outdoor dining under set guidelines pertaining to capacity, social distancing and others. Then, in Phase 3, which began on June 16, 2020, indoor dining was allowed to resume under guidelines. Then, on July 16, 2020, the Governor announced that anyone ordering an alcoholic drink had to order a meal.

Furthermore, banquet venues were constantly forced to operate with ever changing regulations, including dancing regulations, capacity fluctuations, and others.

In response, the County Health Department sent health inspectors to bars, restaurants, banquet halls and other entities in Erie County to inspect them for compliance with COVID-19 regulations, policies, procedures and executive orders.

In a letter to Commissioner Gale Burstein, MD, dated September 29, 2020, a request was made to publicly release specific information on rules and regulations required of businesses to implement; Erie County Health Department policies related to COVID; businesses and organizations that have received warnings, or were cited or fined for COVID-related violations; and the amount of fines levied for those businesses or organizations.

The request came soon after Whistleblower complaints were received by the Office of Comptroller after the County Executive and 15 others were photographed without masks and while not social distancing, on September 25, 2020 at a local, public golf course. The complaints increased after the County Executive

stated that he did not have to have on a mask because he was around the other individuals for less than 10 minutes.

His statement read, in part: “Our Department of Health considers a close contact being with others for more than 10 minutes. While I should have worn a mask nothing the team members did in that photo is contrary to our health protocols: we were outside, less than 20 people and together for the photo for about 15 seconds.”

Violations – Critical and Non-Critical

The Health Department documents its Food Facility Inspections on its website: www.erie.gov/health. There are three types of inspections:

- Complaint Inspection
- Routine Inspection
- Re-inspection Inspection

Each inspection visit is supposed to include a report. If a violation was documented, the report labels it as **critical** or **non-critical**, and includes an explanation of the violation. There appeared to be a lack of some pertinent information. For example, when The Cowboy was closed following a July 2, 2020 site visit, the online report’s summary stated: 0 critical & 1 non-critical. The report did not state the business was ordered to close. The report stated, “All employees properly donned face coverings after discussion by end of inspection.” The business did not have a reported **critical** violation until the August 21, 2020 site visit.

During our look at inspections since regulations were put into place during the COVID-19 pandemic, we found violations to be arbitrary or subjective. While some restaurants were given a “non-critical” violation concerning staff not wearing a mask, others were written up for a “critical” violation for the same offense.

An analysis of the violations found 424 violations at 280 restaurants, establishments, veterans posts, daycares and churches. Approximately 37 percent of the violations were labeled as “critical” and 63 percent were “non-critical.” See Appendix B

One example of a discrepancy: In a visit to Forty Thieves in Buffalo, on August 13, 2020, the inspector cited them for a critical violation, reporting: *“An imminent health hazard - Non-Compliance with COVID-19 Executive Orders (EO) and NY forward guidelines. Failure to enforce use face coverings by all employees as per NYS Executive Orders and associated NYSDOH Phase 3 guidance. Operator provided with NYSDOH Phase 3 reopening guidance previously. 2 employees in kitchen not wearing masks properly at the time of the inspection.”*

However, the inspector who visited Ricottas Pizza Niagara on July 17, 2020, cited a non-critical violation and reported: *“14-1.10(a) / An imminent health hazard condition has been found to exist at this food service establishment by the on premises service of food or drink to the public and congregation of persons during the COVID 19 public health emergency that is in effect this date. two employees observed not wearing masks at time of inspection.”*

As you will see in the following section, neither business was fined, however, several other businesses were fined by the Health Department, for “employees not wearing face coverings.”

From March 27 through April 30, 2020, the Health Department ordered the closure of AJ’s in Clarence (March 27); Swannie House in Buffalo (March 27); The Original Warehouse in Blasdell (April 3); Gabel’s Bar in Buffalo (April 14) and Eden Memorial VFW Post #8265 in Eden (April 18). There are no supporting reports on the Health Department’s Facility Inspection webpage for any of these closures. In fact, according to the webpage, at least one location hadn’t been inspected since February 2019. See Appendix A.

Fines

Documentation provided by the Health Department on October 8, 2020 reported 54 fines/ordered closures at 53 local restaurants. The penalties ranged from forced closure to monetary fines ranging from \$800 to \$100. In all, \$15,250 in fines were levied.

There were nine (9) restaurants and establishments forced to close.

Restaurants forced to close for “operating indoor services against NYS EO” were:

- AJ’s in Clarence
- Eden Memorial VFW Post #8265 in Eden
- Gabel’s Bar in Buffalo
- Swannie House in Buffalo
- The Original Warehouse in Blasdell

Restaurants forced to close for “Overcrowding and lack of social distancing” were:

- The Cowboy in Buffalo

Restaurants forced to close for “server failed to wear mask while in direct contact with public” were:

- Kaz’s in Blasdell

Restaurants forced to close for “patrons standing, drinking, dancing without face coverings, no food observed, no social distancing” and “Non-essential social gathering >50 persons. Patron service of drinks while not seated, customers (about 150) congregated without social distancing” were, respectively:

- The Groove Lounge in Buffalo
- The Stage in Clarence

Restaurants fined \$800 for “lack of face coverings” and non-COVID-19 violation:

- Bacchus Wine Bar in Buffalo

Restaurants fined \$600 for “Staff without face coverings 3x; no customer social distancing controls, masks or signs/indicators” and “employee and patron face coverings”:

- Gino & Joe’s Pizza (lower) in Buffalo
- Stroh’s in Angola

Restaurants fined \$500 for “Non-essential social gatherings” were:

- Hotel Henry in Buffalo
- Salvatore’s Italian Gardens

Restaurants fined \$450 for “employees lack adequate face coverings, 3x” were:

- Senor Tequila in Buffalo
- TGI Friday’s in Buffalo

Restaurants fined \$400 for “employees lack of face coverings” and non-COVID-19 violations:

- Wayside Family Restaurant in Buffalo

Restaurants fined \$350 for “employee face coverings” and non-COVID-19 violations:

- Wendy’s Old Fashioned Hamburgers in Buffalo

Restaurants fined \$300 for “employees lack of face coverings” were:

- Armor Inn Tap Room in Hamburg
- Artone’s Pizza and Subs in Buffalo
- Blasdell Pizza in Blasdell
- Boco Kitchen Inc. in Hamburg
- Buffalo Ling Ling Garden in Kenmore
- Buffalo Wild Wings in Tonawanda
- Chili’s Grill and Bar in Clarence
- Dos Amigos in Blasdell
- El Ranchito Mexican Restaurant in Williamsville
- Frankie Primo’s +39 in Buffalo
- Gino’s NY Pizza in Amherst
- Hoak’s Restaurant in Hamburg
- John & Mary’s in Depew
- Jokers of Lackawanna in Lackawanna
- Leos Pizzeria and Wings in East Aurora

- Little Caesars in Depew
- Master Pizza in Cheektowaga
- McDonald's in Amherst
- Mister Submarine in Buffalo
- My Dad's in Williamsville
- New Sun Garden in Amherst
- Pegasus Family Restaurant in Hamburg
- Pita Gourmet in East Amherst
- Red Top Hots in Hamburg
- Russell's Steaks Chops & More in Lancaster
- Santino's Pizza Shack in Elma
- Seneca Red Hots in Buffalo
- South Shore Beach Club in Evans
- Sunshine Vegan Eats in Buffalo
- The Cowboy in Buffalo
- Tim and Bonnies Pizza Gowanda in Gowanda
- Tim Horton's in Buffalo (Seneca Street)
- Tim Hortons in Lackawanna
- Wendy's Old Fashioned Hamburgers in Tonawanda

Establishment fined \$300 for "non-essential social gathering" were:

- St. Gabriel's Roman Catholic Church in Elma

Restaurants fines \$100 for "kitchen employee lacked face covering" were:

- Caputi's Sheridan Pub

Conclusions

The report shows that based on data available at the time of examination, \$15,250 in fines have been levied against local businesses during the COVID-19 pandemic. While we recognize the need for safety in our community, the violations and fines determined by the Health Department appear inconsistent. As such, and based on the comments made by the County Executive pertaining to a "10-minute exposure rule," WE RECOMMEND that the Health Department review its standards to have one set of guidelines.

The Health Department should review and determine if businesses that were fined or closed received a 10-minute grace period. The reasons written as the basis for the fine or closure did not specify the length of time individuals were improperly wearing facial coverings. They do not include sufficient information to determine if the 10-minute rule cited by the County Executive was violated. This could subject the County to appeals and other unnecessary legal expenses. As such, WE RECOMMEND that the Health

Department review the circumstances regarding fines assessed for improper usage of facial coverings and refund fines paid where appropriate.